

Transcript of the interview with Jerome J. Shestack

Malcoun: Today is Tuesday, November 21, 2000. We are in the Shuster Room for the Teaching of Dispute Resolution at the University of Pennsylvania Law School to interview Jerome J. Shestack, Honorary Fellow of the University of Pennsylvania Law School. Mr. Shestack is a partner and Chairman of the Litigation Department at Wolf Block Schorr and Solis-Cohen. From 1997 to 1998 he was President of the American Bar Association and is a nationally renowned trial lawyer.

Malcoun: Mr. Shestack, where were you born?

Shestack: I was born in Atlantic City, New Jersey. The house in which I was born is now Trump's Palace and there's no plaque there commemorating the event.

Malcoun: And did you grow up in Atlantic City?

Shestack: I grew up until I was about ten years old and then my family moved to Philadelphia and moved to Winfield.

Malcoun: Where were your parents born?

Shestack: My parents were both born in Russia. My mother came to this country in 1910 with her father who became the first orthodox rabbi in Atlantic City and my father came over in 1913 and served in the Army during World War One and won his citizenship that way.

Malcoun: Do you have siblings?

Shestack: I have two sisters, Louise Abrahams . . . Louise . . . and Judy Feldman.

Malcoun: Is anyone else in your family an attorney?

Shestack: No one else is an attorney. My sister Louise Abrahams Dubrow is an insurance executive and my sister Judy was a librarian and a schoolteacher and counselor for many years.

Education/World War II

Malcoun: Where did you attend grade school and high school?

Shestack: I went to Horace Mann School as an elementary school, Hebrew Junior High School for Junior High and Overbrook High School for my high school.

Malcoun: What made you decide to attend the University of Pennsylvania?

Shestack: Well there is a number of reasons. One, it was a very good university. Two, I couldn't afford to go out of town, my parents were very poor and by going to Penn it enable me to live at home and take three trolley cars to get to university every day. In my later years at Penn, I had joined the Naval ROTC and then moved into the dorm with all the other Naval ROTC students.

Malcoun: What activities were you involved with in college?

Shestack: When I was in college I think studying was the least of my activities. I managed to graduate pretty good grades, but I was on the soccer team, I was captain of the rifle team and held the intercollegiate rifle record, I was on the fencing team, the chess team, the debating team at the same time I worked at the library at night and taught Sunday school to help my way through school. At that time for working in the library you got fifty cents an hour which I considered a very good salary and so studies occupied a secondary role. And then the war broke out in 1941 and we accelerated so that I graduated in about three years rather than four and most of my courses were, in the last year, Naval ROTC courses. And then I went into a brief training period having received an enseignship in the Navy and then went on to an aircraft carrier for three years.

Malcoun: What is your fondest memory of your college years?

Shestack: I thought college was a very exciting time, the world was in a kind of turmoil, World War Two was going on, we hoped the Nazis would be defeated. I remember the day Pearl Harbor came about, it was on a Sunday and then next day, Monday, everyone spontaneously wore their uniform, their Naval ROTC uniform and we were really

anxious to get into the war and get out and fight because we thought it would be the brave new world afterwards. And I was terribly anxious to graduate get into the Navy and get over seas. My fondest memories in many ways were the Naval ROTC training, the collegiality, the solidarity between the students and the excitement of the atmosphere at Penn in those days.

Malcoun: Where was your carrier located overseas?

Shestack: It went through . . . , it was commissioned in Norfolk, Virginia and then it went overseas very quickly. It was in the battle of the Philippines and Leyte and most of the battles in the North China Sea. We were hit by two kamikazes and almost sunk. As a matter of fact the order was given to abandon ship and I remember it very well. I had been on watch. I was the only officer of the ship who was a non-Naval Academy graduate who was qualified as an officer of the deck as a result of the good training I had received in the Naval ROTC. And, I had been on watch and I called down to the ward room where people eat lunch and asked what they were having for lunch in the fear that they was pork chops which I don't eat as a matter of religious dietary laws so I said I'd stay up on deck and I didn't go down. About five minutes later a kamikaze plane hit the ship and killed 150 officers lined up to eat in the wardroom. So

that was quite a I'd say a God given gift to me. And then about a half-hour later we were hit by another kamikaze which created havoc on the deck. It killed the navig . . it killed the gunnery officer, the captain was wounded with 56 pieces of shrapnel in him, other officers were killed. At an instant I became a senior gunnery officer, some of the other people had been killed and I was in a room that was trapped, I was trapped with fire all around. We found exit where the fire was lower and I ran out with a lieutenant commander and then realized that some of the people in the room may not of known of this exit so I forced myself to go back in to tell them that this exit to that compartment. And we were maybe forty feet above the ocean and the abandon ship order came and the lieutenant commander said well lets jump over. We had our life belts on and the ship was listing to the starboard, I said well wait 'til the ship gets a little close to water before we jump. But we were able to salvage it and then limp back to Seattle and the Bremerton Navy Yard and that was quite an experience. At the end of that we went back into the battle zones and we were at in Tokyo Bay when the surrender took place in 1945.

Malcoun: What are some lessons you took from your years in the war?

Shestack: I think the main thing that I learned in the war other than my really desire for a world that would be a better world which I think motivated so many of us was the ability to lead and command as an officer. I was really in my teens when I became an officer and I was I think the youngest officer of the deck in the Third Fleet. But you had to command, you had to exercise leadership as an officer—I was a gunnery officer and then a damage control officer—and I think the responsibility and the mandate to provide leadership as an officer is something that will remain with me all my life.

Malcoun: Did your experience in the war in any way influence your later interest in human rights and your work with the United Nations?

Shestack: I don't think it was the war as such, I think my interest in human rights came from my background. I remember my grandfather always saying that the hymn the most important verse in the Bible was "Justice, justice shall thou pursue" in the Book of Leviticus, I think, and that was always something that was always in the back of my mind. It was not so much a fight for justice, but a fight against injustice. Injustice is easier to recognize. Justice is an

elusive concept and sometimes eludes us as to what in encompasses and how we define it. But injustice is generally easily recognized. And I've always had a feeling that part of my life should be a fight against injustice. I think it was Aristotle that said that an unexamined life is not a good life and part of a good life is examining ways in which you can make the world a little better and fighting injustice is one of those ways. So I think that was my interest in human rights then I went from civil rights to mental health to international human rights, the progression is one I can easily trace.

Malcoun: What are two books that most influenced your development?

Shestack: I think that the Bible is certainly one. The Old Testament and the lessons in it and the morality of it I think the Bible, the Old Testament and the Prophets, minor prophets too, Amos' search for justice, Mica saying what does the Lord want of you except to do justly and walk rightly and I would say that was the primary influence in my life as far as identifying one book or one series of books.

Malcoun: What influenced you to go to law school?

Shestack: I didn't really know whether I wanted to go to law school. I also thought about being a journalist. I had been editor-in-chief of my junior high newspaper, my high school newspaper, college newspaper, while I was in the Navy I edited a newspaper as well as my gunnery duties and so I thought seriously of being a journalist. But I think law and what law could do, and its potential for doing good, the excitement and variety of it influenced me. So after the war I applied to Penn and to Yale and to Harvard and I really wanted to go to Penn because it would have been less expensive and I could stay at home but Harvard was the first to admit me so I was worried about getting admitted to the other schools which later I was and accepted at Harvard. The story of why I first made an application at Harvard and why some of the professors at Harvard pressed me to go there was an interesting one. After the damage to our aircraft carrier as a result of the kamikaze plane they sent me to San Francisco for damage control, of course it was a little late, but in any event while I was there the UN conference on the human rights charter, on the UN charter, was opening, it was April 25 or 26 and it was the first meeting of the UN to adopt the United Nations charter. And I wanted to get in to that and I tried every way I knew, I said I was representing the Third Fleet class press and everything,

but a young ensign couldn't get in. So I was sitting in the Opera

House where the all the delegates from around the world were convening and I was writing out a first day envelope to commemorate it—I had bought some of those, they were on sale there at a post office station—and a man next to me asked me what I was doing and I explained first day covers to him and he said he had a son who was a stamp collector and would I buy him some so I gave him some. And we started a conversation and I told my ship was bound to go out back to the Pacific the next day and how I was so anxious to attend, it was my idea of this brave new world I had mentioned. And it turned out that, well he said to me how would you like to be my Naval aide for the day. And I said, yeah I'd be delighted I didn't know who he was. It turned out to be Manley Hudson, who was a judge of the International Court of Justice, the senior US delegate to the UN conference, San Francisco conference, and he constituted me his Naval aide. And so I was able to get into the conference and had the unique experience of being there and hearing Truman speak and Molotov and Smutts and all the great figures of that time. And later on he kept in contact with me and he interviewed me and urged me to go to Harvard, so I did. In any event, I was very glad to be accepted. It was really a very exciting place. I remember my first day at Harvard, almost everybody in my class wore a Phi Beta Kappa key.

Next day no one wore it. It was a really high powered class, there had been maybe 5000 applications or an enormous number and only about 500 were in my class. Most of the class had been veterans, had been through the war, many were married and the competition was fierce but the intellectual stimulation was really intense. It was a very exciting time. I mean, purely, how do you think better, how do you analyze better. It was what I think Harvard was best at teaching you: how to think and how to be a clear thinker and a precise and analytical one, understanding relevance and understanding how law really works.

Malcoun: What was your first year of law school like?

Shestack: What was it like? It was . . . the competition was really enormous. I'll tell you one anecdote, how fierce it was. I had three roommates and one time I had to go on an errand across town and it was close to exam time. And I went with one of my roommates and we decided we didn't want anyone else to get ahead of us in time so we kind of shut them up in the bedroom for the 2 hours we were gone. It was a practical joke but they took it seriously because they couldn't get at their books, then we were afraid to let them out they were so angry, but we did and peace was restored. That shows you how intense it was. I did well my first year, I came in ninth in

my class even though in one exam I fouled up because I hadn't read two of the questions, but there I got a C, but the rest I got an A and the study group I was a part of most of the people there wound up in the first ten, fifteen in the class. The competition was intense but it was a competition that I thought was healthy because it wasn't a competition for monetary rewards in that sense it was only a competition for the best intellects, for the people who would do best, who would understand the law, who would really write well and the people who won the honors deserved the honors it wasn't because of their class background, it wasn't because of their wealth, it wasn't because of their influence, it was sheer intellectual exercise. You don't find that outside of the early days in law school and so I regard that as a very happy time in my life.

Malcoun: What subject did you enjoy the most in law school?

Shestack: Well the subject I enjoyed the most was Civil Procedure which I did the worst in the C because when the exam came there were 2 questions on the back of the page. I never realized there were 2 questions on the back until about five minutes from the end of the exam, but my notes were so good that the professor borrowed them to teach from the next time and Richard Field was the professor who was a great professor. The other courses that I liked

in law school were jurisprudence. I had tremendous professors for that, I took three courses in it because the philosophy of the law really helps frame your understanding of the law. One was Lon Fuller, another was Roscoe Pound and the third was Karl Lewellyn who became my mentor throughout my early career and I became, he named me as his literary executor. But those were really three giants of the law, but there are other giants at the law school at that time. Sam Williston was still there and Ernest Brown and David Cavers and Professor Hart. It was a great faculty at that time, Dean Griswold was another.

Malcoun: You were Editor in Chief of the Harvard Law Record, what was the Harvard Law Record?

Shestack: The Harvard Law School Record was in a sense the school newspaper. It covered events, it had essays, it had editorials, it had light verse, it had a variety of things like the Harvard Crimson would on the undergraduate level. I was involved, I was working while I was in law school, I was on the Harvard Legal Aid Bureau and I did a lot of writing for the Record and so finally I was named Editor-in-Chief. And I used to contribute editorials, interviews. I came to Penn one time, a bunch of us decided we wanted to see what other law schools were like, so we sent students for a week at

California, week at Columbia and I spent a week at Penn. And it was really a relegation because at that time I thought that Harvard was by the far the best law school in the whole country. But when I came to Penn I found that the professors were just as good at Penn as they were at Harvard. And I got to know the Dean and Judge Goodrich and had a very interesting experience, but in a way it was a revelatory one because I realized that the ego one had about Harvard was not quite justified. They might have had a better crop of students at the time because of the selectivity, but in terms of teaching and faculty standing, they were just as good here at Penn with Louis Schwartz and Clark Bice and Fry and other of the giants at that time.

Malcoun: While at Harvard you were an Ames Moot Court Finalist, do you believe your experience in Moot Court prepared you for the extensive trial work of your career?

Shestack: Our Moot Court experience was very interesting. While I was at Harvard the first woman professor at Harvard came to teach there, Soia Mentschikoff. she was the wife of Karl Lewellyn and both they became my mentors and later were successful; in offering me positions at University of Chicago. But she was a tremendous person, a wonderful personality and we formed a club called the

Mentschikoff club. It infuriated Dean Griswold. The clubs were often named after professors and his club had never even gotten into the Moot Court semi-finals, let alone finals. And the first time the Men went through the quarterfinals, the semi-finals and into the finals. And she was a terrific mentor in terms of teaching us how to write briefs, how to make arguments, how to engage in successful and effective advocacy and we went into the moot court finals but unfortunately lost in the finals. But the moot court finals are very important. There are some other cases if you're interested in at Harvard. One of the famous cases was a case that was known as *Poindexter v. Prosser* and I'll tell you how that happened.

Everyone knows who Prosser was, Prosser was the famous Prosser on Torts, he was from Minnesota and later dean of the University of California and in my second year he was teaching a course in bills and notes at Harvard Law School. His first day in class, I wasn't in that section, he asked someone if they had a five dollar bill. And a fella by the name of Poindexter, Bill Poindexter said he did. Prosser said, give it to me. So Poindexter gives him the five-dollar bill. Prosser says, this is a five-dollar bill, it's a bearer note, anyone can cash it and he explained the bills and notes aspect of a five-dollar bill. And at the end he put it in his pocket and Poindexter said, where's my five dollar bill and he says, I asked you for it, you gave to me and it's a bearer note and its

mine. So when Poindexter left the class he told it to me. And I said, why don't we sue the SOB. So we went down to the District Court, the State District court and we wrote out a complaint and we asked the constable to serve it the next day in class. And this time I sat in the class. About one third away in the class there's a big knock at the door, the constable enters, burly constable with a deep voice, anyone here by the name of Prosser? Prosser acknowledges him and he hands him the complaint, he reads the complaint out to the class and he laughs and he says to Poindexter, I hear that you're getting married next week—which was true—here's five dollars, go take your wife . . . you're bride out to dinner, which in those days you could do for five dollars. So he says, well I guess I can tear up the complaint and Poindexter says, oh on that five dollars was a wedding gift, I want my original five dollars back. So we decided we would have the case with the original state court judge, but we would have it in Langdell Hall in our large moot court room there and we would have a real case. So Professor Prosser appointed Professor Edmond Morgan as his lawyer, who was a teacher of Evidence and a great law professor, and I and two other students were the counsel for Poindexter. And we had a wonderful trial and all sorts of interesting events and we got Professor Morgan, who told us never ask a question you don't know the answer to, to ask a question he didn't know the answer to, we

thought we did well. But the judge decided the original five dollars had been a bailment and had been given back, so in a sense we lost the case. But I wrote it up for Time Magazine, Time Magazine published the article, sent me ten dollars and I took Poindexter and his bride out to a better dinner than the five dollars would have done. That was a famous case. With Professor Mentschikoff we were all very pleased that a first woman was at Harvard Law School and I did a series of verses which I handed to her every Thursday signed: Thursday Troubadour, anonymously. And I remember the first one was kind of a parody on English poets who would have encountered their first poet, their first women at Harvard Law School. And one of the verses went like this: With rue my heart is laden, for manly profs I had; And who would have thought a maiden would teach this Harvard lad. A little macho for those . . . but you gotta remember this was a long, long time ago. When Soia who later became Dean of the University of Miami Law School retired, Nick Katzenbach and Ed Levy, former attorney general and myself were the guest speakers and I recited those poems again. But every Thursday I would do a parody on the sales act or something else and I would leave it on her desk and Karl Lewellyn her husband who was then teaching at Columbia and was a very good poet, had written a book on poetry, poetic verse called "Putting your Thumb" he would respond to Thursday Troubadour

and that's how our relationship started and then became a very close relationship between myself and the young woman I was dating then who later became my wife, Marciarose who also became a mentee of Karl Lewellyn.

Malcoun: Did you always want to be a litigator?

Shestack: I think litigation was in my blood. I was on the debating . . . captain of the debating team in high school. I was a debater in college. I think I had a natural propensity for advocacy which made me want to be a litigator. I thought litigation was more exciting, you could accomplish more, you were in the court process and very much in law school training is litigation training, they teach you cases and the adversary system. So I think from the beginning I wanted to be a litigator although at the beginning I clerked on the third circuit and then I taught at LSU, Northwestern Law School, and served as first deputy city solicitor of Philadelphia so I was in a variety of activities which were not strictly litigation.

Malcoun: So following law school you clerked on the Third Circuit, for how many years?

Shestack: Just , just right out of law school. And then I received a fellowship, a teaching fellowship at Northwestern. And I went there at a very exciting time. Adlai Stevenson was governor and he was starting his plans for the presidency and many of the law school faculty at Northwestern which was excellent were very much involved in his presidency. Wally Shafer who later became a Supreme Court Justice of Illinois. William Worts who later became Secretary of Labor. Students there like Newt Minnow, later became chair of the Federal Communications Commission I would say half the faculty was involved with Adlai Stevenson. So although I was teaching fellow, Wally Shafer went to Springfield to work for Governor Stevenson and I took over his courses so in my first year, first year and a half out of law school I was teaching courses at Northwestern which was a superb law school then and now.

Malcoun: What did you enjoy the most about teaching?

Shestack: I liked the exchange with students. I liked the challenge of it, the ability to learn more. I wrote a whole bunch of law review articles during my teaching experience for Northwestern, for Penn Law

Review, for others. And the intellectual stimulation of faculty people, who were all very bright, and often the avant-guard and cutting edge of their profession was exciting. And I got out of teaching really because I was then got a position as an associate professor at LSU law school and got married, my wife was taking her masters there and I was teaching. And I came home on vacation to Philadelphia in the library of the Philadelphia City Solicitor's office and started talking to a deputy city solicitor, Leon Mezerov, who told me Philadelphia was involved in a codification of all of its ancient and arcane laws and I had started a project like that, codification, throughout the all the Louisiana municipalities because I was teaching local government. And one of my mentors in that field was Jeff Fordham, who later became Dean of Penn Law School and that was his field. Next day I get a call from Abraham Freedman, who was city solicitor. He had been a partner in Wolf-Block, later he became a district judge and later he became a judge on the third circuit court of appeals and was about to be chief judge when he died in 1971, I think. But he called me and asked me if I would be willing to come and handle the codification of the law department the municipal codes. And I said well I'm teaching and my wife overhearing the conversation said well maybe you could commute and I like a good husband repeated maybe I could commute but actually it developed into a serious conversation

where I taught one week all my courses at LSU and the next week I flew up here and worked on the codification project. Well the city controller at that time who was a Republican, Steven McLaughlin, found out that I was doing that and he thought I was getting paid from both sources, LSU Law School and the City and that I was double dipping. So he issued a statement stopping the pay and saying that the new administration of Jo Clark and Richardson Dilworth was involved in a scandal. Well actually I took no pay from the City. All they paid was my airplane expenses because I was getting a salary from LSU. So all sorts of people came to my defense as the kind of young man we should have in local government, Karl Lewellyn, Dean Griswold and so I got a lot of premature I would say publicity at that time and a renowned far beyond what I deserved. Then I took a leave of absence from LSU and became deputy city solicitor and then resigned to become first deputy city solicitor. It was an exciting time. It was a new administration after sixty years of Republican rule. There was a new home rule charter. I argued maybe fifteen, twenty cases before the Supreme Court of Pennsylvania, someone who was only about four years out of law school then. One day I argued three cases before the Supreme Court at one time. Abe Freedman who became my mentor was one of the greatest lawyers I've ever known. He was so successful and so good as an advocate that

Chief Justice Horace Stern once said I can't listen to Abe

Freedman when he argues because he'll persuade me. I have to not listen to him so I can look at the case and decide it strictly on the merits. He was that good an advocate and a mentor. And it's interesting many years later now at Wolf-Block when I came back to Wolf. . . when I came to Wolf-Block, Schorr and Solis-Cohen I occupied Abe Freedman's office which was very poignant and meaningful to me.

Malcoun: Do you remember your first trial?

Shestack: I remember the first time I took depositions and I hardly knew what I was doing but there was a senior member there to advise me. And the first trial I had was an important trial involving about three million dollars of child's advocacy funds that we needed for the city government and there was people who were fighting it and the state government and it was a complex matter but we were successful in that. And then of course I was involved in . . . we were fighting discrimination at the time that I was in the city solicitor's office. And this was when Jo Clark came in, swimming pools were segregated, places of public amusement were segregated, bowling alleys were segregated and I went out one time to check on the segregation of a bowling alley myself where I

would have to be like a witness and I was chewed out by the city solicitor saying you're a lawyer not a witness, you impair your legal abilities arguing a case if you also become a witness. In any event we won cases that dissolved desegregation and the first time people of color appeared in the law department. We gathered a terrific law department together. We had two former Supreme Court law clerks, Harvey Levin and Murray Schwartz. We had a number of lawyers who had served on the court of appeals as law clerks, we borrowed people from the large law firms. We had at that time during Abe Freedman's regime, I think, probably the best law firm in the whole City. Many of the assistant city solicitors later became judges, successful practitioners. It was an exciting transition time, it was like the first days of the New Deal. We did all sorts of things, codified the laws, made new grounds, supported the home rule charter, established the civil service system. It was one of the most exciting periods in my life and we worked day and night. And then afterwards when the term came to an end I had an offer for an associate professorship at the University of Chicago, I taught at Penn Law School and I had various offers from law schools. My wife didn't want to leave Philadelphia at the time, she had started in the documentary field and on television and I accepted an offer from Bernie Segal, who had been Chancellor of the Bar, later President of the ABA, a man who was with Abe Freedman, the two

best lawyers I ever met and who became my mentor and my partner. And he had argued a case in the supreme court against Abe Freedman. What had happened was there was a fight between Pennsylvania, New Jersey, Delaware and New York over water allocation. A special master had been appointed and the result was not what Philadelphia wanted. So Philadelphia tried to intervene in the Supreme Court case saying that as a home rule city they were free of the parents patria doctrine and were emancipated and could interfere and be part of the supreme court original jurisdiction action. So it was argued before the Supreme Court. The Supreme Court decided adversely to Philadelphia. But I met Bernie Segal, we rode back on the train ride and I think he was more impressed with Marciarose than with me but in any event he offered me a position that I accepted. And I was with the Schnader firm for 35 years. A marvelous and superb firm.

Malcoun: What areas of practice did you start out in at Schnader Harrison?

Shestack: I think I was kind of a generalist. I did everything in the course of my career there and since at the Wolf-Block. I've tried securities cases, antitrust cases, a great deal of First Amendment cases, I specialized in that. But I tried eminent domain cases, taxes cases, I don't think . . . patent cases . . . I don't think there's a case that I

didn't try. My theory has always been if you're a good litigator you can try anything. You can become a specialist in various fields whether its securities, antitrust, but the best lawyers that I've know are lawyers who can go in, master any case in a short time, gather all the evidence together and use their litigating skills to be a good trial lawyer and that's what I think I tried to do. So I never wanted to so exclusively practice in one field that I would be precluded from other fields. So I take pride in saying I was a generalist.

Malcoun: While at Schnader Harrison, you negotiated the FTC's industry wide settlement against the rental car industry?

Shestack: There a couple of large antitrust cases. One was a Federal Trade Commission complaint against Avis, Hertz and National. And there were a lot of private antitrust cases as a result of that. And we settled with the FTC and then I litigated all the private antitrust cases. It went up to the Ninth Circuit twice, cert. was denied by the Supreme Court and we eventually won. But there's an interesting story out of those cases. We were before Judge Renfrew in the Northern District of California. And he was making one ruling after another against me and the time came when we made a motion for summary judgement and he asked me how much time I needed and I said well I needed a whole morning. And he said why do you

need a whole morning? And I said because I detect that your honor's mind is closed against us and it'll take at least that time to try and open it. Well he was furious. He called be back in chambers, wanted to know if Philadelphia lawyers were always that fresh with the court. In any event, I argued the case, he gave me the whole morning and I lost the summary judgement motion. About that time Griffin Bell who was Attorney General of the United States and a good friend, called me and said he was looking for a deputy attorney general and did I have any recommendations. And I knew that Judge Renfrew was a person who, beyond his judicial duties, was interested in prison reform and the administration of justice, so I said I thought Judge Renfrew would be a good candidate. He said well why don't you ask him. I said, well I can't ask him because I'm a litigate before him. But one of the court of appeals judges Cecil Pool I'm sure would be willing to ask him if he's interested. So Judge Pool did and Judge Renfrew said he was interested and Attorney General Bell interviewed Renfrew and offered him the job. About that time there was a change in the cabinet and Bell retired and the new attorney general was Civiletti. Civiletti called me and asked me and I said well I still recommend Renfrew. So he had a meeting with Judge Renfrew and offered him the deputy attorney generalship and he became deputy attorney general. And later on I brought the same motion for

summary judgement before Judge William Schwarzer who had replaced Renfrew in that case and he granted the motion. So Renfrew always claimed I recommended him to get him out of the case which wasn't true but it makes a wonderful anecdote.

Malcoun: When did you leave Schnader Harrison to go to Wolf Block?

Shestack: It was about ten years ago. And the circumstances were these: I really thought that Schnader was a fine firm and I still think so today and many of my close friends and mentees are there today, including the current Chairman Ralph Wellington who is a superb lawyer. But when I was about forty I helped draft a retirement policy at the age of sixty-five which was rather inflexible and I thought that was very wise of me at the time. Well as I got close to sixty-five I didn't think I was so wise and it was a fairly inflexible policy. And just about that time Wolf Block had just lost two of its top litigators and they asked me to join them and waive the retirement. Also I was then starting to run for Presidency of the ABA and I knew Wolf Block would support me. So I accepted the offer. My friends at Schnader remain but the experience at Wolf-Block has been an excellent one. Later on they asked me to Chair the litigation department. It's a splendid firm with some of the brightest, smartest people I've ever known, a deep commitment to

pro bono service and these ten years have been a very productive ten years with interesting cases but also full support of the firm when I became President of the ABA and other public ventures that I was in. so I've had the best of both worlds. A wonderful firm at Schnader and a splendid firm at Wolf Block.

Malcoun: In 1994 you defendant American Broadcasting Companies in a libel case that resulted from a segment on the program 20/20. What was at issue in this case?

Shestack: The issue in that case is a John Stossel who was the reporter for 20/20 had done an investigation of a Doctor Rogal, he was a dentist who specialized in TMJ, jaw disorders as a result of whiplash, and he called him a quack on the program. And Rogal sued for about twenty million dollars in a defamation suit against ABC and John Stossel and ABC and John Stossel asked me to represent them and I worked for Burt Rublin at the Wolf-Block firm another excellent lawyer. It was a very exciting case. There was no doubt that Stossel had called Rogal a quack. When we were through with the case and the discovery we discovered that not that Rogal was a quack but that in effect he had falsified records and had done things that were crooked and eventually the jury found in our favor and the judge referred the case to the US attorney for

perjury and possible prosecution, fined him 250,000 dollars roughly in litigation costs and also fined Rogal's lawyer. It was a dramatic case, it took about three weeks, it was a high profile case because under an experiment in the District court it was on court TV and later on excerpts of that case from that case had been used as teaching tools. Especially I think the cross-examination of Rogal which showed him to be a perjurer in his testimony at that time.

Malcoun: You wife was a television journalist, did she serve as an advisor to you during this case?

Shestack: Not during that case, no she never interfered in a case as an adviser, but I'll tell you a couple of stories about it. Marciarose had been producing documentaries and won most of the documentary awards and then she became the first woman in the major market to anchor the TV news. Won the McCall's award for the top television journalist and for ten years had fifty percent share of the market on the noon show and anchoring the news and was columnist. She edits all my articles and all my speeches and is a superb editor but she doesn't get involved in litigation advice. However, one time—and she doesn't usually come to court—but I'll tell you two times when she did. One I was defending a shield law, arguing a shield law constitutionality case before the Supreme

Court and since it involved reporters and shield law she came to listen to the argument. She sat down and I got up to argue and Chief Justice Nicks said Mr. Shestack, I see you've brought your rooting section with you. So I said, she doesn't always root for me your honor. But another case, and this was a securities case, *Peil v. Speiser*, *Speiser v. Peil* which was one of the first securities cases to actually go to trial. I was examining a witness one day and she came into the court room and watched from the back of the court room for about an hour and I didn't even know she was there because my back was to her and my face was to the witness. The next morning, I was in an elevator with my partner Joe Crawford, who was trying the case with me and when we got out of the elevator we noticed that a juror had been in the elevator and Joe and I had been discussing the witness who had testified yesterday. We didn't know that the juror was there because it was a crowded elevator and the juror is supposed to use a juror's elevator. So when we saw that the juror got out we went and reported it to the judge that a juror had been there. So the judge called in all the jurors to find out what was discussed that morning, had the juror overheard our conversation and had he discussed it with the other jurors. It turned out what they were all talking about was they were wondering whether Marciarose whom they had seen in the courtroom was my wife. They didn't know. So the other side then

moved to exclude my wife from further proceedings in the court.

The judge laughed at that, but she never came again. They lost the case, we won the jury verdict . . . when Marciarose had been in the courtroom. So she rarely ever goes to a courtroom to hear me.

She gets the recitation the night after the argument.

Malcoun: You have argued over 150 cases in appellate courts across the nation, what is it you enjoy the most about trial work?

Shestack: Trial is always exhilarating, the scenario changes everyday, you have to be prepared, you have to be anticipated, you have to be quick on your feet, it's challenging, you never know how it's going to come out. Trials are really an exhilarating experience.

Preparation I think is the main key. When I was a young lawyer I often used to be successful against older, senior, more experienced lawyers because they didn't prepare as well. They thought that their own knowledge and their experience would carry them through. So I resolved that I would never be caught unprepared and I prepare just as hard today for a case as I did when I was a young lawyer, sitting in a number two chair. Appellate advocacy is something else. That's a matter of skill, of understanding what is really bothering the court, of coming to the heart of the issue, of developing a bright line for the court. It's a great challenge and I've

argued I guess maybe 250 appellate cases. Every one of them is a challenge. They say that you prepare one argument, you give a second argument and that night when you're in bed you think of a third argument that you should have given. I take a lot of pride in my preparation for appellate arguments. One time I remember Judge Leon Higginbotham telling me that his law clerks had voted my argument the best in the term that they had heard and I was very proud of that. Then the decision came down against me and I saw Judge Higginbotham and I said I thought you said I made the best argument in your term and you decide against me. He said, what do you want to do, win the argument and the case as well? So beware of a judge who praises your argument. But appellate advocacy is a real skill. Both Bernie Segal and Abe Freedman were exemplars of the most skillful appellate advocates I've seen. A good trial lawyer is not necessarily a good appellate advocate and vice versa. I try with our younger people to show them how to write an appellate brief, how to make a good appellate argument, we brainstorm it, we horse-shed it, we do all the things that you have to do to prepare people. The skill of appellate advocacy is I think a type of a unique skill and there are very few really very good appellate advocates that I've heard. I can name some, but Bernie Segal and Abe Freedman would stand among the highest.

Malcoun: Do you still get nervous in court?

Shestack: I don't get nervous in court. I get nervous when I'm waiting for jury. I'm restless, I don't know what to do with myself, I go back to work, I sit in the courtroom. That's when I get the butterflies but I don't get nervous beforehand. I guess I'm too busy preparing and thinking to have time to be nervous.

Malcoun: What is your most memorable case?

Shestack: Probably one of the most memorable cases I had was a case involving a library of about, worth maybe fifty to a hundred million dollars. This was a library that was amassed by a rabbi of Lubavitch movement. Rabbi Schnaerson. And he amassed this library in Europe during the Czarist regimes and during the Communist regimes, 1920s, 1930s until World War Two began. And he gathered these books from all over the world and it was a valuable collection of incunabula, hand written documents, treasures, old volumes, literature of all kinds. A tremendous research library for scholars. The library was brought to this country through the intervention of President Roosevelt, Justice Brandeis, Secretary of State Sumner Wells and others who were able to get the library from Germany into Sweden and then into the

United States. And the library was in the Lubavitch headquarters in New York. They suddenly noticed that books were missing, about four hundred valuable books were missing. One was sold by a hot bookseller for seventy thousand dollars just to show you the value this is one out of forty. And they put a surveillance on it and they discovered that the nephew of the current Rabbi, Menasha Schnaerson, was pilfering these books and selling them. And so a civil suit instituted. And he claimed that the Rabbi, who had gathered the books, had died without a will and the Rabbi had two daughters. One that was married to the current Lubavitch Rabbi and the other was his mother. And he claimed that half of the estate was his because no will was left. And that suit was tried before Judge Sifton in the Eastern District of New York, who is the son in law of Reinhold Neber by the way. It was an intense trial and witnesses like Elie Wiesel and Louis Jacobs, great seminarians and philosophers testified in that trial. And the issue was had the Rabbi gathered these books as his personal possession over the years or as a community library. And the judge said that the library was a community library and belonged to the community. And that was an exciting case. It was written up in the New York Times, the courtroom was pack day after day, the witnesses were prominent witnesses and at stake was this valuable, valuable philosophic,

theological research library. That was one of the more exciting cases.

Malcoun: You are involved in arbitration and mediation in major complex cases involving commercial disputes, contract disputes, international disputes, health care and entertainment cases, you are a lecturer on arbitration at conferences of Dispute Resolution section of the ABA, conferences of the Center on Dispute Resolution, you are a designated mediator for the US District Court for the Eastern District of Pennsylvania and a designated arbitrator and mediator on the Center for Dispute Resolution National Panel, do you see arbitration and mediation as eventually taking lawyers out of the court room?

Shestack: I think so. You know we call arbitration and mediation alternative dispute resolution. I would call ADR appropriate dispute resolution. Litigation has some deleterious effects very often, there's rancor, there's bitterness, relationships afterwards are often sour. We may be a litigious society but it isn't a healthy aspect, it isn't a civil society by being litigious. So if we can have dispute resolution through mediation and arbitration, I think we advance a civilized society, we make relations between the litigants possible afterwards, it's an efficient method of doing it. I'm on the Board of

the American Arbitration Society and also involved with other dispute resolution groups. So I urge it whenever I can. I think most corporations at first were skeptical of arbitration, they thought that arbitrators just split the baby. That's not true. Arbitrators decide the way it should be decided, but they do it efficiently, there's much less rancor involved.

Malcoun: Has the adversarial norm change since you began practicing?

Shestack: I think there's a greater emphasis today on civility. Now, many years ago, it is said that there was civil relations between litigants because people knew each other and they were polite to each other. And then the whole generation of perhaps Rambo litigators developed. Which I discourage. I think civility is part of the law. Civility really means not just hugging your opponent or saying my brother or my sister. It really is a respect for another human being. Underlying civility is the dignity and worth of human beings. I think civil relations is good for that reason alone, but also when you have incivility and Rambo tactics it invites retaliation, it destroys relationships, judges don't like it, so from a practical viewpoint it's not good. A young associate who comes to me and tells me what a Rambo litigator he was does not get approval from me. He gets reproof and they know that that's not the way to practice law.

Lawyers who do that I don't think ultimately are successful. So

when someone says I want the meanest, toughest lawyer or corporate counsel says to me, I say we'll give you the best lawyer that we have, we don't have meanest and toughest lawyers, that's not an approval rating for a lawyer in my book.

Malcoun: Is there a need to put reasonable limits on adversarial conduct and do you believe arbitration and mediation a good solution?

Shestack: Well, I think judges should encourage mediation. They do in Federal courts very often. I don't think a judge can force an arbitration or mediation but I think lawyers can put those in their agreements and those agreements for arbitration can be enforced and they should do so. I think judges can certainly engage in mediation, whether a magistrate or a neutral judge who is not going to try the case. I think lawyers ought to do it themselves. I'm involved now in a major dispute and both sides have suggested we get a mediator into it and I think we'll probably settle it if we have a skillful mediator. As to limits on discovery and other limits, within reason yes, I think there ought to be limits. I don't think you should be able to ask hundreds of pages of interrogatories, repeat depositions numerous times. But I think a good judge who case manages his cases can confine it. We don't need a lot of new rules

on it but I do think we need judicial involvement in case management. The better judges in the Federal and state courts manage their cases well and see that discovery is within reasonable limits and they don't let it get out of hand.

Legal Services

Malcoun: Pro bono work has been an integral and important part of your career. In addition to your numerous awards and honors, you are a recipient of the Van Briesen Award which is given out by the National Legal Aid and Defender Association in recognition of outstanding contribution to the field of Legal Services. You have served on the National Steering Committee to establish the first OEO Legal Services Program, you were a member of the first committee to draft the Legal Services Corporation legislation, you were a founder and a former board member of Community Legal Services of Philadelphia and a member of the Executive Committee of the National Legal Aid and Defender Association. Do you believe pro bono service is an essential part of the legal profession?

Shestack: I can't imagine why you're asking. I'm a great believer in pro bono services for a number of reasons. I think first of all, helping those who are poor and in need and disabled and disadvantaged and

alienated, I think its part of being a decent human being. Whether you consider yourself as a human being born in a divine image or just as part of a human race, it's a decent thing to do. I think it's an especially decent thing for lawyers to do. The legal profession emerged out of the middle ages as one of three professions. The medical profession was designed to deal with the health of the body; the clerical profession was designed to deal with the health of the soul; and the legal profession was designed to deal with the health of the body politic, deal with the system of justice. And pro bono service, especially trying to improve access to justice is a factor in improving justice. There are other reasons. Lawyers have special privileges, they're a monopoly, they're a license. Society gives a great deal to lawyers and if they give a great deal to lawyers, lawyers should give something back. Also I think if lawyers are committed to the central ends of justice then they have to address pro bono service or access to justice. And also if lawyers want to have a commanding role in their society then they have to participate in the needs and tasks of society. And if they don't they'll be constrained to a lesser place in society and I think lawyers don't want that, they shouldn't want that. And finally, it's fun. Some of the most fulfilling things I've done have been in the pro bono area and helping the poor and disadvantaged and advancing the pro bono area. I gave a commencement speech at

Penn Law School once, which I called "The Joy and Pain in Our Profession." There is a lot of pain in our profession, but part of the joy is the ability to serve, to do pro bono service and in my law firm, in the litigation department, pro bono is mandatory. I would think everyone would participate even if it wasn't mandatory. We have a pro bono training coordinator. We are deeply committed to pro bono at my law firm. That's one of the things I'm proud of at Wolf-Block for having such a commitment to pro bono service.

Malcoun: What pro bono activities are you presently involved in?

Shestack: Well, I've always been involved in legal services for the poor. I was on the steering committee to develop the OEO Legal Services Program under Sargent Shriver and help start the Legal Services Program. With Earl Johnson I helped draft the first draft of the Legal Services Corporation Act. I've been involved in starting the pro bono center at the ABA. I've been involved in Legal Services for as much as I can remember as a lawyer. The ABA was a great supporter of the Legal Services Program. It would have gone down the tubes under President Reagan, it might have gone down the tubes now under the current Congress, had it not been for ABA advocacy. When I was Chair of the Standing Committee on Legal Aid, I mustered a hundred and twenty-five bar leaders from all over

the country to come down and lobby for legal services at a time when President Reagan and the Office of Budget Management wanted to eliminate the whole legal services program. So, the support of legal services, which Philadelphia lawyers have been superb at doing and Pennsylvania lawyers have been very good at doing and the ABA, is I think important. What do you have if you don't have legal services? You have people who are alienated, who feel they've been dealt a cold deck, who are dissatisfied with our system. That's not good for America, it's not good for justice. So we have to address the needs of the poor, the disabled, in civil rights areas and access to the poor in other areas of pro bono service. I think the lawyers of America have done reasonably well, but we could do a lot more.

From Civil Rights to Human Rights

Malcoun: I would now like to discuss another area in which you have worked extensively, the area of international law especially your work in human rights area and with the United Nations. How did you become interested in the area of international law?

Shestack: Well, it was a progression. Back in 1963, President Kennedy called together two hundred and forty-four lawyers to start a committee for civil rights under law. Bernie Segal was one of the motivators of

that conference and Bernie and I helped pick the two hundred and forty-four lawyers to attend it. During the first year of the Lawyers Committee for Civil Rights, Bernie Segal and Harrison Tweed were picked by President Kennedy as the co-chairmen. This was during the middle of the civil rights revolution when Bull Connor in Alabama was using bullwhips and dogs against protesters. When protesters were jailed in Selma and in Americus, Georgia and threatened with life imprisonment. It was the tough bitter days of the civil rights revolution. Lawyers Committee for Civil Rights started its organization and made a difference in bringing about desegregation, enlisting lawyers even in the South and arguing cases. We opened an office in Mississippi in a terrible troubled time. It was a real influence. During the first year of that committee, I served as the unpaid executive director and then we hired David Stall who later became a judge on the Third Circuit and Berle Bernhardt who now heads a major law firm in Washington, to be the executive director. Robert Kennedy played a great role in that lawyers committee. I remember he met monthly with the board of directors of the Lawyers Committee which had on it Lloyd Cutler and Bill Coleman and Bernie Segal and Berk Marshall and other great heroes of the civil rights movement. And I remember one time he was saying that he was getting letters from children in Mississippi saying that because of his involvement in civil rights he

would go to hell. And he said, I may go to hell, but it won't be for those reasons. He said, the winds of change are in the air and the lawyers of this nation are making a difference. When he said that, that was a very proud moment in my own life and all those who heard that. Well, from civil rights I kind of got into, in the sixties, into mental health. Chesterfield Smith appointed me chair of a new commission on mental health and we started advocacy services and got lawyers involved in mental health. Then one day in the late sixties I was invited to speak at the University of California on a seminar comparing the U.S. Constitution and the International Covenant Against Racial Discrimination. So I started learning about international human rights. And about that time, I was invited to join the board of the International League of Human Rights one of the three first NGO's in the field of human rights. Well, it seemed to be a natural progression. Civil rights doesn't stop at the waters edge and it goes into human rights and I knew about the Universal Declaration of Human Rights which was started in 1948 and the UN which was very slow in implementing it, but gradually covenants of civil rights, the international law of human rights was being established and the NGO's were very active in doing that. The Amnesty, the International Commission of Jurists, the International League for Human Rights which was founded by Roger Baldwin. So I worked my way up and eventually became President of the

International League for Human Rights. I spoke at conferences, I went to many, I wrote articles on it and I got deeply involved in it and it was important. There were dissidents in the world like Sacheroff and Shiransky and Mandela that needed support and we were out there supporting them. And then during the Carter administration, I was asked to be the U.S. ambassador for human rights and in the first two years I couldn't do it and I turned it down, but I accepted it during the last two years of his administration and I served in Geneva. And we made a lot of progress in getting the Commission for Human Rights to be more active, to be more vigorous, to be more outspoken. And all my life I've been involved in international—since at least the late sixties—international human rights organizations. And we've seen a lot of progress. If you look back at what the world was like in the 1970's and '75, very few people were involved in human rights, there were only a few people writing about, very few were teaching it. There were just a handful of non-governmental organizations. You had the junta in Argentina, you had Stroessner in Paraguay, you had the generals in Brazil, you had the generals in Uruguay, you had [] in central Europe, you had Franco in Spain, you had dictatorship in Portugal and now all of those areas—and you had communism in Eastern Europe and Russia—and now all of that has been democratized. You have emerging democracies. So although progress is slow, I used to

look at the human rights movement as someone like Sisyphus, rolling the mountain up the hill again every night and then having to do it again the next night. But we made progress and I think the world is a better place for human rights. But there are some notable failures, Rwanda, Bosnia, most of China, large portions of southeast Asia, Malaysia. There's a lot of work to be done but on the other hand Archibald MacLeish once said the true revolutionary movement of our time is human rights. It has not been communism; it's not been Marxism. I think human rights has been the true revolutionary movement of our time.

Malcoun: You are presently the Chairman of the Committee on Conscience at the United States Holocaust Memorial Museum and you along with Rabbi Irving Greenberg recently published an op-ed piece in the Washington Post with regard to genocide in Sudan, in your opinion what should be the international community's response?

Shestack: First let me say the Holocaust Museum is dedicated to the principle of never again. It stirred the memories of that horrible, tragic, too cruel to comprehend period of the holocaust. But it would be unfaithful to the past if it also did not work for the future. And so the Committee on Conscience is directed, its mission is to deal with future possible crimes of genocide and crimes against humanity.

To alert the national community to them, to arouse the national conscience, to let conscience and morality play a role in foreign policy. Sudan is a kind of forgotten abuse of potential genocide. Two million people in the last decade have been killed in Sudan, four million people have been displaced, slavery is tolerated, starvation often occurs, ethnic groups are targeted for bombing and persecution. And pretty much the world has not done much about it or even recognized it, so the Committee on Conscience has taken on that as one of its missions and we've got an exhibit at the museum depicting in photographs what is happening. We're going to try and alert the national conscience through op-ed pieces, seminars, press statements and the like. Because its Sudan, because its in some remote place of Africa, even though Sudan is probably the largest country in Africa, it should not be forgotten. Humanity is not divisible into races and ethnic groups. Humanity are human beings all over. And so that's why we're in Sudan.

Malcoun: You are the founder and served as the first Chairman of the Lawyers Committee on Human Rights, what is the mission of this organization?

Shestack: The Lawyers Committee on Human Rights was started when I was President of the International League for Human Rights. It was

started mainly to enlist lawyers in human rights objectives. I was the first chairman of it when it began around 1978. When I became ambassador for human rights I resigned from it. But I've always been involved in its activities. Originally it started dealing with refugees and asylum cases. But since then it's enlarged. It sends missions, trial observers, it's one of the important forces in addressing human rights violations. And it uses teams of lawyers who are equipped to go to trials, to go on missions, to issue statements whether it's in Northern Ireland or Rwanda or Somalia. It's done a very, very good job and it's an important non-governmental organization today and I'm quite proud of my role in getting it started.

Professionalism and President of the American Bar Association

Malcoun: I'd now like to turn to your role as President of the American Bar Association from 1997 to 1998. What were your principle responsibilities as the national representative of the legal profession?

Shestack: Well, I started in the ABA along time ago. Bernie Segal got me involved on it. I started really with the section of Individual Rights and Responsibilities which was a great force in the ABA. If you look at the ABA in the early 1960s it wasn't involved in legal

services for the poor, it wasn't involved in civil rights, civil liberties, it didn't deal with discrimination in the courts or among judges. It was a very conservative organization. It refused to endorse the human rights treaties. The section of Individual Rights proved a great stimulus and catalyst. By the end of . . . I would say by the 1990s, by the 1980s, the ABA had endorsed all the human rights treaties, it was deep in legal services, it wouldn't approve judges who belonged to discriminatory clubs. It was involved in civil rights and civil liberties and mental health. And it brought all of those things into the mainstream. At one time when I was involved in those matters in the section of civil rights, a member of the house of delegates wanted to hold me in contempt because I was getting the ABA involved in matters they thought it shouldn't be involved. Now those are all mainstream issues and the ABA I think is a leader in justice issues. There are people who still say the ABA shouldn't be involved in a moratorium on the death penalty or in various of these measures and they give them liberal terms. I don't give them liberal terms. I think they're matters of justice and exactly where the ABA should be. So I started with the section of Individual Rights and then I was chair of the Commission on the Mentally Disabled, then chair of the Standing Committee on Legal Aid, ran for state delegate, was six years on the nominating committee and board of governors. I worked my way up and one-day I thought well maybe I

should run for President of the ABA. And I guess I was the first avowed liberal running for President of the ABA and I didn't think there was so much chance. I ran and then a woman candidate ran against me and so I withdrew because I thought first there should be a woman candidate and second realistically I wouldn't have beaten her. And when I finally was elected I was only elected by one vote, so I know how Governor Bush or Vice President Gore feel about it. I can tell them, assure them, one vote is a mandate. It's just as good as a landslide. But I received the votes of both conservatives and liberals and I think I received the vote based on my position and my platform. I think the ABA President has a bully pulpit. He has a chance to lead the lawyers of our nation into good channels. My particular theme was professionalism and by professionalism I had six points. One was ethics and I mean by ethics not just looking at the rules and pushing the envelope as far as you can or looking at it as you would an Internal Revenue Regulation. But looking at it as a bounty not as bondage, as something you want to embrace, that you want to exalt, that you want to advance and as part of your tradition and pride as a lawyer. That you go even beyond the ethical rules into truth telling and transparency and even beyond ethics into ethical type of value. The second area is excellence or competence if you want but a competence that leads towards excellence and independence

because I think if lawyers give up their independence they've given up the real value, primal value of the legal profession. The third area is continuing legal education. Not just taking courses as a matter of getting points or as a route but because education broadens you and enlarges your vision. I like renaissance type of lawyers, so it's that type of continuing education. The fourth area is civility and as I said civility not just as a matter of politeness but as respect for the worth and dignity of the individual and creating a civilized society. The fifth area is the obligations to the justice system because we are as lawyers ministers of the justice system and we have an obligation to improve it, make it less crowded, less over-burdened, make it more accessible. And the last element is pro bono service. We did a lot of things during my term. We had the first meeting at the UN, we had meetings dealing with . . . conferences on disability law and family court and other things. It was an exhilarating period. But I think the emphasis on professionalism and those six elements of professionalism motivated many bar associations, led to many articles and is the legacy that I would like to leave as President of the ABA.

Malcoun: Are any of those six elements more important than the other six?

Shestack: I think ethics and integrity is the key one. I think that's what makes lawyers stand apart. I think that's one reason I have opposed multi-disciplinary practice in becoming partners with accountants or other disciplines because we have standards of ethics, we don't share them with others, others are not willing to accept them. We have our standards of conflict of interest, our standards of protecting a client. I think—unfortunately not all lawyers abide by that integrity—but the integrity of a lawyer, the independence of a lawyer is something that I think is a high value of our profession. It enables us to the good things we can do in society.

Malcoun: The Ethics 2000 Commission will be releasing its report containing proposed amendments to the Model Rules of Professional Conduct next Monday, do you believe the commission be successful in advancing the development of professionalism for the next decade?

Shestack: I started the Ethics 2000 during my term of presidency and appointed Chief Justice Veasey as chair of it. I haven't seen the report and so I can't really comment upon it. I'm sure that they have improved our ethical condition. Whether they have done it enough, the bar is normally conservative in that regard. I think that

I would have probably have liked to see more emphasis on special rules of ethics where you're representing people in class actions or consumers or in mediation or in arbitration. But it's a start. One makes progress in this field slowly and deliberately and probably it should be that way. I'm now Chairman of the Standing Committee on Ethics of the International Bar Association and trying to develop ethical codes and dealing with corruption which is prevalent in many countries, transparency on an international level. But I have great faith in the Ethics Committee 2000 as having raised our ethical standards. You know when ethics started at the ABA they were just aspirational, they weren't even guidelines, they weren't even compulsory. Back around 1908 when the first rules came out they weren't much to speak of really. And we have advanced in our ethical standards. They have become more direct, more mandatory, more sensitive and Ethics 2000 is another advance but it's not the last of the advances.

Malcoun: Does legal education today adequately address issues of professionalism?

Shestack: I'm not an expert on legal education, but I have taken a position that legal education ought to deal more with issues of ethics and professionalism and that ought to be prevalent in the courses. One

time Justice Ruth Ginsburg asked a professor about an ethical problem and did he teach about it and he said well ethics is taught in the second year. Well, ethics shouldn't be taught in any particular year, ethics ought to pervade all the law school courses. And some professors have started to do that. Deborah Rhode, a professor of law at Stanford has been a real proponent of that and I think that law schools ought to deal more with teaching ethics and teaching more professionalism. I also would like to see more of jurisprudence and philosophy of law in the curriculum. Because I think the training of thinking and concepts is important for lawyers. There's a lot of talk of greater clinical teaching in law schools and I'm not against greater clinical teaching I think some of that comes in practice through law firms and mentors by itself. But those areas of ethics and professionalism do need to be taught and they make a difference. I think the emphasis of law schools being involved in pro bono training as University of Pennsylvania Law School is, is a very healthy development. The law school curriculum has advanced considerably since the days of Langdell, but I think there's a lot of thinking and introspection that is still necessary and advances for the future are still in order.

Malcoun: What advice would you give to a young person just graduating law school and entering the practice of law with respect to what it means to be a member of the legal profession?

Shestack: I think, involve yourself in your profession. I mean, not only work hard at what you're doing but involve yourself in the bar, involve yourself in the pro bono, become involved in the community, try and be broad gauged, read a lot, be a type of a renaissance man or woman as we use that term but also be proud of your profession. If you're not proud of what lawyers can do, how they can exercise leadership, how they can advance society, how they can serve their clients, how they can help justice, then you shouldn't be a lawyer. I mean it's a calling, it's an honor, it's a profession, you should be imbued with it, you should live it, you should breath it. Now I know that's often difficult, the quality of life maybe effected, you have obligations to your family. There is no such thing as a free lunch and there are tradeoffs necessary, but unless you have a passion for the law you shouldn't be a lawyer.

Malcoun: While ABA president you outlined four elements to the good professional life: 1. Regarding lawyering as a profession; 2. Involvement in the drama of humanity; 3. Fealty to the rule of law; and 4. pro bono service. It appears to me that you find much

pleasure and satisfaction in your profession, have you enjoyed the professional good life?

Shestack: I think so. I . . . you know I told you I gave this commencement speech to Penn "Joy and Pain in the Profession." And there is pain, you see injustice done, you see clients not served that you thought. You go through the trauma and the angst of a trial or a transaction. But the joy is what you can do for people. Treatises call us healers if you want, call us servants of the public if you want, call us as practices of an art. I think there is a lot of satisfaction. Learned Hand once said that you can have as joyful and satisfactory a life in the legal profession, better than in almost any other profession and I believe that. I think that there is a lot of satisfaction and fulfillment. The examined life, you can do it in the law profession. The good for society, you can do it, you can also gain your own personal well being as a result of it. I think it's a wonderful profession. I think it's great to be a lawyer. I'm glad I'm a lawyer and I just hope that others coming into the profession don't lose their idealism or don't become cynical about the profession and become involved in all of its many aspects and aspirations.

Election 2000/Conclusion

Malcoun: And now just briefly I would like to address the current election. At one time you served as a member of the Democratic National Committee's finance committee, what is your take on the election situation?

Shestack: Well I think we have a divided country. I don't necessarily believe that's bad because I have a great faith in the nation coming together after the election. I thought that Vice President Gore was the better of the candidates that would lead this country in a better direction but it so evenly divided that half of the country thought otherwise. I think one thing that should emerge whoever wins is that there has to be a more unity type of government, that the extremes of either side cannot be put into force and that there ought to be a great effort at a bi-partisan type of government. It's never really been the case in our history. One side has won and had all the appointments and not tried to exercise much in a bi-partisan way even though they publicly said that they would. But now there's a real challenge to whoever wins to make this a more unified country and emphasize the values that are democratic values, not republican values or democratic party values, but values of a democratic society with a small "d." So in a sense I'm saddened by the division, that has started to bring about rancor and

accusations that are pointless and unrealistic but I'm hopeful that the lesson that emerges out of it is one, the need for everybody to vote, and two, the importance of uniting the country in a bi-partisan way that takes into account the views of both parties and seeks to work out something that can advance the country without being overly partisan.

Malcoun: Mr. Shestack, it was a pleasure to speak with you today, thank you.

Shestack: Thank you, I enjoyed the interview very much.